

In the Matter of License No. A-2419-1, 4
Issued to: COLIN NICKELSEN

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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COLIN NICKELSEN

On April 25, 1949, a hearing of the charge of "Inattention to Duty," preferred against Colin Nickelsen, Z-34319, was held by an Examiner of the United States Coast Guard in Honolulu, T. H. The charge was supported by one specification alleging, "while serving as Chief Mate on board a vessel of the United States, the U.S.A.T. FS 368, under authority of your duly issued license did, on or about 0545, 27 August, 1948, while on the bridge of said vessel and standing the 4 a.m. to 8 a.m. watch, observe that the vessel was approaching dangerous waters, and that although you had knowledge of the danger, failed to notify the master, who was in charge of the conning of the vessel; the vessel going aground at 0555, 27 August, 1948." The charge and supporting specification were drawn as a result of an investigation of the grounding of the U.S.A.T. FS 368 on August 27, 1948. Appellant was at the time of the grounding employed as Chief Mate of the grounded vessel. Appellant appearing through counsel, pleaded "not guilty" to the charge and supporting specification. After the Investigating Officer related the results of his investigation, he called Captain Gordon B. Smith, U.S. Army and Commander Thomas K. Whitelaw, U.S. Coast Guard as witnesses. Both of these witnesses gave testimony as to evidence which they heard given by the Appellant, as well as the master of the FS 368, at the Coast Guard investigation into the cause of the grounding. No further testimony was offered by the Investigating Officer whereupon the defense counsel moved for a dismissal of the charge and supporting specification against the Appellant on the ground of insufficiency of evidence to support the same. The Examiner denied the motion. Appellant's counsel offered no evidence, whereupon the Examiner found the charge and supporting specification "proved" and ordered that License No. A-2419-1, 4, and all other licenses held by Colin Nickelsen be suspended for a period of six months. The Examiner further ordered that the suspension should not be effective provided that no charge under R.S. 4450, as amended, was proven against the Appellant for acts committed within twelve (12) months of April 27, 1949.

From that order, this appeal has been taken and it is contended:

- (a) There was insufficient evidence to support the specification;

- (b) The testimony shows the master was in charge of the vessel and there was no obligation on the part of the chief mate to report an obvious situation of danger to the master;
- (c) Due to personal friction between the master and chief mate the Appellant was justified in remaining silent when speaking would have caused further disagreement;
- (d) The chief mate was unaware of the port of destination and therefore unable to advise the master; and,
- (e) The Examiner while making no specific finding inferentially held that the sole responsibility of grounding was attributable to the master.

OPINION

The record of this case establishes clearly that the U.S.A.T. FS 368, upon which the Appellant was employed as Chief Mate, went aground while approaching Pearl Harbor, T.H. at about 0555 on August 27, 1948. The record further indicates that the Appellant was assigned to the 4 to 8 watch and standing that watch when the master of his vessel asked him to give him a "fix" of the vessel's position. There is no indication that the master officially relieved the Appellant of his duties as officer in charge of the watch but the action of the master in "conning" the vessel, with attendant orders to the helmsman, impliedly relieved the Appellant of his duty as watch officer. This implied relief did not, however, relieve the Appellant of his over-all duty to his vessel and his shipmates to warn the master of impending danger. The record indicates that the Appellant was aware of the fact that the vessel was in shallow water and he should have called this to the attention of the master irrespective of any personal differences or animosities that had arisen between the master and the Appellant. It is the duty of every member of the crew of a vessel, licensed or otherwise, to be at all times on the alert to assure that the vessel will complete her voyage safely.

The Appellant's contention, on appeal, that he was unaware of the destination of the vessel and was, therefore, unable to advise the master is without merit. The destination of a vessel is immaterial when danger is imminent. In the instant case, the Appellant admitted he saw that the vessel was navigating in shallow waters. He failed to show that such course was the only course available to the vessel in the waters in which it was navigating. On the other hand, the record indicates that the Appellant was fully aware that the vessel was being operated in waters where the danger of grounding was imminent, and that corrective measures could have been taken in time if he had followed the duty of every seaman to take all measures necessary to prevent injury to the vessel upon which he is employed. This the Appellant failed to do. The record does not indicate that any of the five points raised by the Appellant in his appeal have any merit.

In view of the foregoing, I find nothing to warrant my intervening in this case.

CONCLUSION AND ORDER

It is ordered and directed that the decision and order of the Coast Guard dated April 27, 1949, should be, and it is, AFFIRMED.

J. F. FARLEY
Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 23rd day of Sept., 1949.